

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-CR-74
)	(PHILLIPS/SHIRLEY)
LEWIS DAVIS,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. In a Memorandum and Order [Doc. 15] entered by this Court on September 5, 2008, the Court ordered the Federal Detention Center at Miami, Florida (“FDC”) to evaluate the Defendant under 18 U.S.C. § 4241(a) and 4242(a). The Defendant’s evaluation period at the FDC concluded and a Forensic evaluation was prepared.

The Court and the parties have received the Forensic Evaluation (“the Forensic Evaluation”) dated February 2, 2009, from Jorge Luis, Psy. D., forensic psychologist at the FDC. The forensic evaluation will be filed under seal, but for purposes of this hearing, it found that the Defendant is not suffering from a severe mental illness or defect that would preclude his ability to understand the nature and consequences of the proceedings against him, or assist his attorney in his defense. As such, the evaluation concludes the defendant is competent under 18 U.S.C. § 4241(a).

The Defendant returned to this district on March 2, 2009. Upon the Defendant’s return, the Court held a hearing on March 10, 2009, to address the Defendant’s competency and

scheduling matters. Assistant United States Attorney David Lewen was present representing the Government. Attorney Bruce Poston was present representing the Defendant, who was also present.

At the hearing, the Forensic Evaluation was made the sole exhibit. Attorney Poston acknowledged receipt of the forensic evaluation and agreed that the forensic evaluation found the Defendant to be competent. The Government concurred that, based upon the contents of the forensic evaluation, the Defendant was now competent to proceed in this matter. After hearing the positions of the parties, the Court asked the Defendant a series of questions to evaluate his ability to understand the proceedings. The Defendant understood the role of Attorney Poston and that this matter was currently proceeding toward trial. The Defendant answered each of the Court's questions appropriately and in a manner which indicated to the Court that he was competent to proceed in this matter.

Based upon the positions of the parties, the forensic evaluation, and the presentation of the Defendant at the hearing, the Court finds, pursuant to 18 U.S.C. § 4241(a) and by a preponderance of the evidence, that Defendant Lewis Davis is able to understand the nature and consequence of the charges and proceedings against him and to properly assist an attorney in his own defense. Accordingly, the Court finds that the Defendant is **COMPETENT** to proceed.

This Court notes that a finding with regard to sanity was also made by Jorge Luis. However, that matter is reserved for trial and the Honorable Thomas W. Phillips. The Defendant and Government indicated they were ready to proceed to trial on the current trial date before the Honorable Thomas W. Phillips, United States District Judge, which is scheduled for April 1, 2009. The Court has already found [Doc. 16] that all the time since defendant was ordered for a psych evaluation to determine his competency and sanity up until the trial date is fully excludable for

speedy trial purposes.

Wherefore,

1. The Court finds that the Defendant is **COMPETENT** to proceed;
and
2. The trial is set to commence on **April 1, 2009, at 9:00 a.m.**, before
the Honorable Thomas Phillips, United States District Judge.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge